

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Jean-Louis Henri Dasseux, et al.

Appln. No.: 10/596,047

Filed: June 21, 2006

For: KETONE COMPOUNDS AND
COMPOSITIONS FOR
CHOLESTEROL MANAGEMENT AND
RELATED USES

Attorney Docket No.: 13657-30

Examiner: Taofiq A. Solola

Art Unit: 1625

Conf. No.: 1170

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
PURSUANT TO 37 C.F.R. § 1.705(b)

Mail Stop Patent Ext
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A notice of allowance was issued for the present application on **March 31, 2009** indicating that the issue fee is due on **June 30, 2009**. The issue fee is being submitted for the present application in conjunction with this request for reconsideration of the patent term adjustment. The Patent Application Information Retrieval (PAIR) system and the notice of allowance both indicate a patent term adjustment that was calculated by the U.S. Patent and Trademark Office ("USPTO") pursuant to 37 C.F.R. 1.701 of **0** days. A copy of Notice of Allowance for the present application is included herewith as Exhibit A.

Applicant's Attorney believes that the patent term adjustment should be **14** days. For the reasons stated herein, reconsideration of the patent term adjustment is respectfully requested pursuant to 37 C.F.R. 1.705(b). Please charge the petition fee

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pursuant to 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925.

The patent term adjustment for the present application was calculated by the USPTO based on activities and associated dates detailed in the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Applicant's Attorney believes that errors and/or omissions in the calculation and/or the PAIR system Patent Term Adjustment History may have resulted in an incorrect patent term adjustment for the present application as described in detail below. The present application is not subject to a terminal disclaimer.

Period of adjustment pursuant to 37 C.F.R. § 1.703

Period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1)

The period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1) is the number of days in the period beginning on the day ("the 14 month date") after that date that is fourteen months after the date on which the application was filed pursuant to 35 U.S.C. § 111(a), or fulfilled the requirements pursuant to 35 U.S.C. § 371, and ending on the date of mailing or either an action pursuant to 35 U.S.C. § 132 or a notice of allowance pursuant to 35 U.S.C. § 151, whichever comes first.

The present application was filed on **June 21, 2006**. The 14 month date specified in 37 C.F.R. § 1.703(a) is **August 21, 2007**. According to the PAIR system Patent Term Adjustment History, attached as Exhibit B, the first action on the merits by the U.S. Patent and Trademark Office in the present application was a **requirement for restriction** mailed on **December 31, 2007** (attached on Exhibit E, further described below). This period

represents a delay on the part of the U.S. Patent and Trademark Office of 132 days. However, the USPTO does not appear to have calculated any office delay for this time period. Thus, Applicant's Attorney believes that the difference between the 14 month date and the date of mailing of the first action on merits should have been 132 days. Applicant's Attorney respectfully requests calculation of USPTO delay for submitting the first office action on the merits and re-calculation of the patent term adjustment to take the corrected date into account.

Period of adjustment pursuant to 37 C.F.R. § 1.703(a)(2)

The period of adjustment pursuant to 37 C.F.R. § 1.703(a)(2) is the number of days in the period beginning on the day ("the 4 month date") after that date that is four months after the date on which a reply was filed pursuant to 35 U.S.C. § 111 and ending on the date of mailing of either an action pursuant to 35 U.S.C. § 132, or a notice of allowance pursuant to 35 U.S.C. § 151, whichever comes first.

In the present application, a reply was filed on **June 27, 2008** as evidenced by a copy of the Electronic Acknowledgement Receipt that is attached as Exhibit C. The 4 month date is therefore **October 27, 2008**. An office action in response to the reply was mailed by the U.S. Patent and Trademark office on **September 30, 2008** (Exhibit D attached). Applicant's Attorney believes that the difference between the 4 month date and the date of mailing of the office action is 0 days. Applicant's Attorney believes that no re-calculation of the period of adjustment pursuant to 37 C.F.R. § 1.703(a)(2) is necessary.

Reduction in Period of Adjustment pursuant to 37 C.F.R. § 1.704

Period of adjustment pursuant to 37 C.F.R. § 1.704(b)

Pursuant to 37 C.F.R. § 1.704(b), the period of adjustment shall be reduced by the number of days, if any, beginning on the day after the date (the 3 month date) that is three months after the date of mailing or transmission of an Office communication notifying the applicant of a rejection, objection, etc., and ending on the date a corresponding reply was filed.

In the present application, a requirement for restriction was mailed on **December 31, 2007** (attached as Exhibit E). The 3 month date was therefore **March 31, 2008**. A response by the Applicant's Attorney to the requirement for restriction was filed with the U.S. Patent and Trademark office on **June 27, 2008** as evidenced by the Electronic Acknowledgement Receipt attached as Exhibit F. Therefore, a delay of 88 days should be calculated against Applicants.

A second PTO action was mailed on **September 30, 2008**. The 3 month date was therefore **December 30, 2008**. A response by Applicant's Attorney to the second PTO action was filed on **January 29, 2009** (attached as Exhibit G). Therefore, an additional delay of 30 days should be lodged against the Applicant.

Period of adjustment pursuant to 37 C.F.R. § 1.704(c)(10)

Pursuant to 37 C.F.R. § 1.704(c)(10), when an amendment pursuant to 37 C.F.R. § 1.312 or other paper was submitted after a notice of allowance had been given or mailed, the period of adjustment shall be reduced by the number of days, if any, beginning on the date the amendment pursuant to 37 C.F.R. § 1.312 or other paper was submitted and ending on the mailing date of a supplemental office action or notice of allowance, or four months, whichever is less.

In the present application, there was no amendment filed pursuant to 37 C.F.R. § 1.312 or other paper was submitted after a notice of allowance had been given or mailed. Therefore no additional reduction for Applicant delay should be calculated.

Total patent term adjustment

For the present application, the total patent term adjustment pursuant to 37 C.F.R. § 1.703(f) is the period of adjustment pursuant to 37 C.F.R. § 1.703 reduced by any delays pursuant to 37 C.F.R. § 1.704. Thus, according to our calculations, we believe that the patent term adjustment should be **(132+0) days - (88+30) days = 14 days**, instead of **0** days indicated on the Notice of Allowance attached as Exhibit A.

It is respectfully asserted that the patent term adjustment determined by the U.S. Patent and Trademark Office for the present application may not be correct. Accordingly, Applicant's Attorney respectfully requests the U.S. Patent and Trademark office to reconsider, and make revisions to the PAIR system Patent Term Adjustment History in view of the previous remarks. In addition, it is respectfully requested that the patent term adjustment be re-calculated by the U.S. Patent and Trademark Office in view of the above remarks. Office personnel are invited to contact the undersigned attorney for the Applicant's Attorney via telephone if such communication would be beneficial in fulfilling this request.

Respectfully submitted,

June 26, 2009
Date

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